

Decision 18-12-002 December 13, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Great Oaks Water Company (U162W) for an Order establishing its authorized cost of capital for the period from July 1, 2019 through June 30, 2022.

Application 18-05-001

And Related Matters.

Application 18-05-004

Application 18-05-005

Application 18-05-006

**DECISION APPROVING PARTIAL SETTLEMENT AGREEMENT AND
RESOLVING REMAINING DISPUTED ISSUE**

Summary

We approve the partial settlement agreement (Settlement Agreement) among Great Oaks Water Company, Suburban Water Systems, San Gabriel Valley Water Company, Liberty Utilities--Park Water Corp., Liberty Utilities--Apple Valley Ranchos Water Corp., Fontana Unified School District and the Commission's Public Advocates Office¹ (together, Settling Parties). A copy of the Settlement Agreement is attached as Appendix A to this decision. We adopt a January 1, 2019, effective date for Suburban Water Systems and

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill 854, which was approved by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

San Gabriel Valley Water Company and a July 1, 2019 effective date for Great Oaks Water Company, Liberty – Park Water Corp., and Liberty – Apple Valley Ranchos Water Corp. The proceedings are closed.

1. Background

On May 1, 2018, pursuant to Commission Decision (D.) 07-05-062² and D.13-05-027,³ Great Oaks Water Company (Great Oaks), Suburban Water Systems (Suburban), San Gabriel Valley Water Company (San Gabriel), Liberty Utilities – Park Water Corp. (Park), and Liberty Utilities – Apple Valley Ranchos Water Corp. (Apple Valley) (collectively, Applicants) each filed separate applications to establish their respective authorized costs of capital for the period commencing on January 1, 2019, except for a July 1, 2019 effective date proposed for Great Oaks. On May 31, 2018, the Public Advocates Office of the Public Utilities Commission (Cal Advocates) timely filed protests to the applications. On June 4, 2018, Fontana Unified School District (FUSD) timely filed a protest to San Gabriel’s application. The Commission consolidated the applications into a single proceeding on June 4, 2018. On June 11, 2018, the Applicants filed and served a Joint Reply of Applicants to the Protests of Cal Advocates (Joint Reply). In the Joint Reply, Great Oaks, Park and Apple Valley requested a July 1, 2019 effective date.

Following comprehensive discovery, Cal Advocates served testimony on August 1, 2018. Cal Advocates’ testimony challenged the return on equity rates

² *Order Instituting Rulemaking to Consider Revisions to the General Rate Case Plan for Class A Water Companies*, D.07-05-062, adopted May 24, 2007.

³ *Application of Park Water Company, et al.*, D.13-05-077, adopted May 23, 2013, as later postponed by the Commission’s Executive Director, Timothy Sullivan.

proposed by each of the Applicants, the capital structures proposed by Great Oaks, Park and Apple Valley, and the effective date requested by Great Oaks, Park and Apple Valley, but accepted the cost of debt rates proposed by each of the Applicants. The Applicants served rebuttal testimony on August 23, 2018. The Commission held a prehearing conference on August 17, 2018 and issued the Assigned Commissioner's Scoping Memo and Ruling on August 31, 2018.

The Parties commenced settlement negotiations on August 27, 2018 and on August 31, 2018 the Applicants and Cal Advocates informed assigned Administrative Law Judge (ALJ) Karl J. Bemesderfer via electronic mail that the Applicants and Cal Advocates had reached an agreement in principle on all contested issues in the proceeding with the exception of the effective date for Great Oaks, Park and Apple Valley, which Great Oaks, Park, Apple Valley and Cal Advocates proposed to address in legal briefing. On August 31, 2018 counsel for San Gabriel informed FUSD of the proposed terms of the Settlement Agreement as they pertained to San Gabriel. FUSD advised San Gabriel that it would, upon favorable action by its Board of Education or its Superintendent, join the Settlement.

On September 4, 2018, ALJ Bemesderfer notified the parties by return electronic message to counsel for San Gabriel, copying all Parties, that the evidentiary hearing originally scheduled for September 6 and 7 would be cancelled. ALJ Bemesderfer also stated that the Applicants' testimony and exhibits would be entered into the record for this proceeding upon receipt of appropriate motions and confirmed that Great Oaks, Park, Apple Valley and Cal Advocates should address the effective date issue in legal briefing in accordance with the proceeding schedule set out in the Scoping Memo. On

September 11, 2018, the Applicants and Cal Advocates filed a Joint Motion to Admit Prepared Testimony and Exhibits, as directed by the ALJ. On September 13, 2018, a previously noticed settlement conference was held in accordance with Rule 12.1(b).

On October 4, 2018, Great Oaks, Park, Apple Valley and Cal Advocates filed opening briefs on the effective date question. On October 15, 2018, the same parties filed reply briefs on this issue.

2. The Settlement Agreement

The Settlement Agreement describes the respective recommendations made by each of the Applicants, Cal Advocates and FUSD. In addition, the Settlement Agreement specifies how differences between the Parties' recommendations were resolved, and lists references to the testimony, evidence, and exhibits of witnesses addressing specific issues.

3. Standards for Approval of Settlements

The Settlement Agreement addresses all but one contested issue in this proceeding. Rule 12.1(d) requires that to approve a proposed settlement we must find it to be "reasonable in light of the whole record, consistent with law, and in the public interest." As to the settled issues, the Settlement Agreement meets those requirements.

3.1. The Settlement is Reasonable in Light of the Whole Record

The Settlement Agreement is reasonable in light of the whole record. It reflects the evidence provided by all of the Parties, presented after extensive preparation and, in the case of Cal Advocates' testimony and the Applicants' rebuttal testimony, after conducting comprehensive discovery. It takes into account changes in the financial markets since the Commission addressed cost of

capital for the Applicants in D.13-05-027. Furthermore, although the Commission's decision D.18-03-035 authorizing costs of capital for the four large class A water utilities is not precedential, it is notable that the average reduction of previously authorized returns on equity agreed to in this settlement is more than 10 basis points greater than the average reduction in previously authorized returns on equity adopted in that decision,⁴ despite evidence of increased market volatility since D.18-03-035 was adopted earlier this year.

Each of the Parties developed its case with testimony and exhibits that each considered sufficient to support its proposed resolution of the issues. The Settlement represents a compromise of those recommendations, reflecting each Party's assessment of its relative prospects for success or for a less favorable outcome. Thus, the Settlement is a fair compromise of strongly held and well-articulated positions on the contested issues. The testimony and exhibits received into evidence in this proceeding provide sufficient basis for the Commission to approve it.

3.2. The Settlement Agreement Does Not Contravene Any Rules or Laws

There is no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement Agreement. The issues resolved in the Settlement Agreement are within the scope of the proceeding and produce rates within a range of reasonableness. All parties have entered the Settlement voluntarily and with the advice of counsel and technical staff.

⁴ Specifically, the average reduction in previously authorized returns on equity for the four large Class A water utilities was 52 basis points, while the average reduction of previously authorized returns on equity agreed to in this Settlement is 62.75 basis points.

3.3. The Settlement is in the Public Interest

The Commission has acknowledged that “There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.” The Settlement furthers this public policy by eliminating the need to develop further testimony and require significant travel in connection with an evidentiary hearing on all issues. The Settlement conserves the resources of the Commission and the Parties and thus serves the public interest.

The process followed by the parties in arriving at the Settlement supports a finding that the Settlement is in the public interest. The parties conducted thorough discovery, met and discussed the contested issues in good faith, negotiated in defense of their respective positions, and considered proposals to resolve the contested issues. This process led to a series of compromises and agreements on the terms of the Settlements which are mutually beneficial to the Applicants and to ratepayers.

Finally, adoption of the Settlement will result in decreased rates for customers of Great Oaks, Suburban, San Gabriel, Liberty Park Water and Liberty Apple Valley. All three considerations support the conclusion that the Settlement is in the public interest.

4. Effective Date

Great Oaks argues that its effective date for implementation of new cost of capital rates was fixed at July 1, 2010 in Decision (D.) 07-05-062, in which the Commission adopted the Rate Case Plan for Class A water utilities. The initial July 1 effective date was not protested by Cal Advocates’ predecessor. Subsequent cost of capital changes became effective on July 1, 2013 and July 1, 2016, again without protest from. Because Great Oaks used July 1 as the effective date for cost of capital changes even before the Commission adopted the Rate

Case Plan, Great Oaks argues that “Great Oaks rate year has been July 1 to June 30 since July 1, 2006.”⁵

Great Oaks further argues that changing its effective date to January 1, 2019 would unfairly deprive it of 6 months of revenue based on its existing costs of capital which are higher than the costs approved in the Settlement Agreement.

Finally, Great Oaks argues that adoption of a uniform January 1 effective date for all water utilities in this proceeding ignores unique features of each utility and potentially violates Public Utilities Code Section 455.2(c):

The commission shall establish a schedule to require every water corporation subject to the rate case plan for water corporations to file an application pursuant to the plan every three years. The plan shall include a provision to allow the filing requirement to be waived upon mutual agreement of the commission and the water corporation.

In its argument for a uniform January 1, 2019 effective date, Cal Advocates argues that because the Settlement Agreement lowers applicants’ costs of capital below their currently approved rates, it would be unreasonable to allow Great Oaks and the Liberty companies to benefit from the current higher rates in the absence of a compelling reason to allow them to do so. Cal Advocates argues that prior proceedings that have recognized the July 1 effective date for Great Oaks have no bearing on this proceeding. Prior settlements do not constitute precedent. Cal Advocates argues that the public’s interest in having a lower cost of capital effective January 1, 2019 costs outweighs the company’s interest in preserving the higher costs until July 1, 2019.

⁵ Great Oaks Opening Brief at 8.

We conclude that Great Oaks and the Liberty companies have demonstrated that they will suffer significant burdens from a change of effective date equal to six months of reduced revenue. The companies have planned their operations in the expectation of receiving that revenue and these operational plans should not be disrupted by an unanticipated revenue loss.

5. Conclusion

Based on the foregoing review of the Settlement Agreement, the underlying negotiations, and the briefs on the disputed issue, we conclude that the Settlement should be approved, that Suburban and San Gabriel shall adopt new costs of capital as of January 1, 2019, and that Great Oaks, Park and Apple Valley shall adopt new costs of capital as of July 1, 2019.

6. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Bemdesderfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 19, 2018 by Great Oaks, Park and Apple Valley.

Great Oaks points out that the proposed decision does not take account of the Commission's acceptance of its Advice Letter 270-W, which authorizes Great Oaks to receive a 9.10% return on its authorized rate base through June 30, 2019. Moving the effective date of the new (lower) rate to January 1, 2019, as mandated by the proposed decision, would cost Great Oaks approximately \$44,250 in lost revenue. Great Oaks also reiterates that it has had a July 1 effective date for new costs of capital since 2006. Finally, Great Oaks notes that while the Rate Case Plan mandates a three-year cycle, it does not require a uniform start date for a

rate cycle. Park and Apple Valley point out that they have historically had July 1 start dates for new costs of capital.

After consideration of these comments, we agree with Great Oaks, Park and Apple Valley that their new costs of capital should become effective on July 1, 2019. The text, Findings of Fact, Conclusions of Law, and Ordering Paragraphs of this decision have been revised to reflect July 1, 2019 start dates for new costs of capital for all three companies.

7. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Karl J. Bemmesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. The Settlement Agreement is the product of good-faith, arms' length negotiation between Parties reflecting all affected interests.
2. Each of the financial terms of the Settlement Agreement is the result of good faith compromise.
3. Great Oaks Water Company, Park Water Corp. and Apple Valley Ranchos Water Corp. have historically instituted new costs of capital as of July 1 of the calendar year in which the new costs of capital became effective.
4. The Commission accepted Great Oaks Advice Letter 270-W which confirms a July 1 starting date for new costs of capital.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the record as a whole.
2. The Settlement Agreement does not violate any laws or prior Commission decisions.
3. The Settlement Agreement taken as a whole is in the public interest.

4. The Settlement Agreement meets the criteria for approval of settlements in Rule 12(1)(d).

5. The Settlement Agreement should be approved.

6. Suburban and San Gabriel should have an effective date for their new costs of capital of January 1, 2019.

7. Great Oaks, Park, and Apple Valley should have an effective date for their new costs of capital of July 1, 2019.

8. The Joint Motion of Applicants and Cal Advocates to admit prepared Testimony and Exhibits into the record of the proceeding should be granted.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement among Great Oaks Water Company, Suburban Water Systems, San Gabriel Valley Water Company, Park Water Corp., Apple Valley Ranchos Water Corp., Fontana Unified School District and the Commission's Public Advocates Office is approved.

2. The Joint Motion of Great Oaks Water Company, Suburban Water Systems, San Gabriel Water Company, Park Water Corp., Apple Valley Ranchos Water Corp., and the Commission's Public Advocates Office to admit prepared Testimony and Exhibits into the record of this proceeding is granted.

3. The effective date for the costs of capital approved in this decision shall be January 1, 2019, for Suburban Water Systems and San Gabriel Valley Water Company.

4. The effective date for the costs of capital approved in this decision shall be July 1, 2019 for Great Oaks Water Company, Park Valley Water Corp. and Apple Valley Ranchos Water Corp.

5. Applications 18-05-001, 18-05-004, 18-05-005, and 18-05-006 are closed.

This order is effective today.

Dated December 13, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners